

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**JAMES A. BRUNO and
KATHLEEN M. BRUNO,**

Plaintiffs,

vs.

**NIAGARA MOHAWK POWER CORPORATION,
LG CONSTRUCTORS, INC., T D T REALTY CORP.,
CORELLIS HOLDING CORP., and THOMAS A.
CORELLIS,**

Defendants.

LG CONSTRUCTORS, INC.,

Third-Party Plaintiff,

vs.

**MICHELS POWER, A DIVISION OF MICHELS
CORPORATION AND MICHELS CORPORATION,**

Third-Party Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

Daniel R. Santola, being duly sworn, deposes and says:

1. I am a partner at Powers & Santola, LLP, attorneys of record for the plaintiffs. Since defendants Niagara Mohawk Power Corporation and LG Constructors, Inc. have made the same arguments in support of their motion for summary judgment, plaintiffs, in order to promote judicial efficiency, respectfully submits one set of

AFFIDAVIT

**Civil Action No. 5:09-cv-01308,
GTS-DEP
Magistrate Judge David E. Peebles**

papers in opposition to defendants', Niagara Mohawk Power Corporation and LG Constructors, Inc., motions for summary judgment.

DEFENDANTS' SUMMARY JUDGMENT MOTIONS

2. Niagara Mohawk Power Corporation and LG Constructors, Inc. have not come forward with proof that they are entitled to summary judgment with respect to plaintiffs' Labor Law Section 241(6) and 200 and common law negligence causes of actions.
3. Therefore, Niagara Mohawk's and LG's motions should be denied in their entirety.
4. Attached as **Exhibit "A"** are relevant portions of the transcript of the deposition testimony of Paul Marschall, page 82.
5. Attached as **Exhibit "B"** are relevant portions of the transcript of the deposition testimony of Richard Allen, pages 22-23, 85-86.
6. Attached as **Exhibit "C"** are relevant portions of the transcript of the deposition testimony of Gregory Miller, pages 14-15, 17-18, 40-31, 98, 100, 117-118.
7. Attached as **Exhibit "D"** are weekly status reports by Niagara Mohawk submitted to the Public Service Commission ("PSC") from May 30, 2009 to June 27, 2009.
8. Attached as **Exhibit "E"** are relevant portions of the transcript of the deposition testimony of David Beatty, pages 9-10, 49-51.
9. Attached as **Exhibit "F"** are relevant portions of Appendix D to the PSC Order adopting the Terms of a Joint Proposal and granting the Certificate of Environmental Compatibility and Public Need for this project.

10. Attached as **Exhibit "G"** are portions of Niagara Mohawk's EM&CP for this project.
11. Attached as **Exhibit "H"** are portions of Niagara Mohawk's Response to Plaintiffs' Request for Production of Documents at page 4-5.
12. Attached as **Exhibit "I"** is the first page of Section 00858, Exhibit H of Subcontract between LG and Michels.
13. Attached as **Exhibit "J"** is a document entitled "Electric Utilities Listing" printed from the PSC website at <http://www.dps.ny.gov/electric.html> on January 19, 2012, at 5:12 p.m. Plaintiffs respectfully request the Court to take judicial notice of this government website.
14. Attached as **Exhibit "K"** are relevant portions of the transcript of the deposition testimony of John Wanalista, pages 15, 26, 27, 34-36, 42-43, 68, 86-87, 103, 104.
15. Attached as **Exhibit "L"** are relevant portions of the transcript of the deposition testimony of James Bruno, pages 74-76.
16. Attached as **Exhibit "M"** is LG's Meeting Minutes for March 18, 2009.
17. Attached as **Exhibit "N"** are relevant portions of the transcript of the deposition testimony of Paul Conner, pages 35, 36, 51, 52, 135, 136.
18. Attached as **Exhibit "O"** are relevant portions of the transcript of the deposition testimony of Fred Drischler, pages 114-115.
19. Attached as **Exhibit "P"** are relevant portions of the OSHA report, page 4.

Wherefore, it is respectfully submitted that the Court should deny defendants' motion for summary judgment.

Dated: February 17, 2012

POWERS & SANTOLA, LLP

By: 

Daniel R. Santola (Bar roll number: 505852)

Attorneys for Plaintiff

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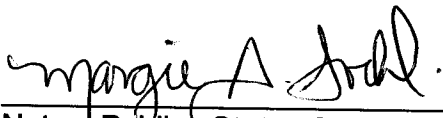
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Sworn to before me this 17th
day of February, 2012.



Notary Public - State of New York

MARGIE A. SOEHL
Notary Public, State of New York
No. 02SO6218761
Qualified in Schenectady County
Commission Expires March 8, 2014